GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT.

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Sri R. D. Deshmukh & Sons, Transport Operators and Contractors, Station Area, Gulbarga.

Award of the Labour Court, Hubli—Published.

Read the following papers:—

(1) Letter No. 795/70—71, dated 4th December 1970 from Sri W. K. Kulkarani, Presiding Officer, Labour Court, Hubli.

BEFORE THE LABOUR COURT, HUBLI
CAMP : GULBARGA

Reference : (ID) LCH Claim No. 57/1969.

Sri W. K. Kulkarni, B. A. (Hons.) LL. B....*Presiding Officer*

Date 25th November 1970

Sri Mahaboob, his cause sponsored by the workman of Auto-Rickshaw and Motor Transport Workers' Union, Ikram Building, Gulbarga.

... *Claimant*

The Management of Sri R. D. Deshmukh & Sons, Transport Operators and Contractors, Station Area, Gulbarga

... *Respondent*

1. This is a reference made by the State Government under Section 10 (1) (c) of the Industrial Disputes Act, 1947 which will be, hereinafter referred to as the Act. The following points of dispute are referred by the State Government to this Court.

1. Is the management of M/s. R D. Deshmukh & Sons, Transport Operators and Contractors, Station Area, Gulbarga, justified in refusing employment to Sri Mahboob from 17th April 1969 ?
2. If not, to what relief is the said workman entitled to ?

2. The case of the claimant in brief is as following. The claimant is a lorry Driver Respondent is the Management of M/s. R. D. Deshmukh & Sons, Contractors. The claimant

joined the services of the Respondent in the year 1955 on daily wages of Rs. 1-50. He was promoted to drive the car on 10th February 1960 and he was further promoted to drive the Lorry on 13th November 1961. That the Respondent firm, all of a sudden retrenched the claimant petitioner without any notice from 17th March 1969. Thereafter he approached the Conciliation Officer, Gulbarga. But the Conciliation Proceedings failed. Later on, this reference has been made by the State Government. In the claim statement the petitioner has in all claimed Rs. 5, 946-00 from the Respondent in case he is not reinstated.

3. The Opponent Sri H. R. Deshmukh has filed a counter statement contending as following: That the Respondents were not transport operators. But only building contractors and had only one Lorry which was used for carrying the building material. It is admitted that the petitioner was in the services of late Sri R. D. Deshmukh from 1st March 1955. After death of Sri R. D. Deshmukh in July 1964 the business came to be managed by his three sons namely, H. R. Deshmukh, V R. Deshmukh and A. R. Deshmukh. In March 1969 it was decided to close down the business and the permit of the Lorry was returned to R.T.O. from 1st April 1969. A month prior to that, *i.e.*, from 1st March 1964 the Lorry was stopped working. This decision was taken in consultation with the claimant who was clearly made to understand that he will not be in the employment from 14th March 1969. After this decision the records of the business were destroyed and all the brothers left Gulbarga for ever for Bombay. The applicant is aware or all these facts and his claims false. The applicant was given 14 days notice before the employment was stopped. He is not entitled to any wages from 14th March 1969. The claimant is not entitled to any leave salary. He was given leave every year as per his requirements. The claimant is not entitled to any retrenchment compensation. He is not entitled to overtime work allowance claimed by him, since no particulars are given in the claim statement in this behalf. He is not entitled to Rs. 1,000 for weekly holidays because he was being given weekly holidays. He is not entitled to any Bonus because it was not paid to any employee. So the claim be dismissed. In case any claim is held as established, the opponent Sri H. R. Deshmukh should be made to bear only 1/3 of it, since all the three sons of Sri R. D. Deshmukh have each inherited 1/3rd estate of their father.

4. At the hearing the Respondent Sri H. R. Deshmukh is absent though he is duly served with hearing notice marked as

Ex. A. So I have proceeded *ex-parte* against the Opponent as the same is permissible under the rules framed under the I. D. Act, 1947.

5. The claimant is represented by Sri Hagari who is an Advocate and also President of the General Workers' Union, Gulbarga. The claimant has examined himself.

6 In the claim statement the petitioner has altogether claimed Rs. 5,916 under various heads, in case he cannot be re-instated. From the admission of the claimant in his evidence and also from the written statement it is quite clear that the business of the Respondent was closed down within 3-4 months of March 1969. The claimant says it was closed down 3 4 months after March 1969, whereas in the counter statement the opponent contends that it was closed down in March 1969 and the permit of the Lorry was surrendered on 1st April 1969. Sri R. D. Deshmukh died in 1964 and thereafter his three sons carried on the contract business under the name and style of R. D. Deshmukh & Sons. The claimant WW-1 admits that after closing the business all the three brothers left for Bombay and they have settled there and that they have also separated in estate. The Re pondents were doing the contract work at Gulbarga. It was clearly an Industry. The same was closed down by the three brothers. So, this is clearly a case of closure of an Industry and the petitioner will be entitled only to closure compensation as laid down in Section 25 FFF of the Act. The question of re-instatement does not at all arise, since the business is closed down. In his evidence the petitioner also does not ask for re-instatement. In fact he does not say anything about it. So, I hold that the petitioner is not entitled to re-instatement.

7 That brings me to the several claims made by the claimant in the claim statement. He admits in his application to the Conciliation Officer that he joined the Respondent Firm in 1955 as attendent *cum*-cleaner. Then in the claim statement he says that he was promoted to drive the car on 10th February 1960. It has to be noted that there is no evidence to show that the driving of the car formed part of the Contract business of the Respondents. The lorry was undoubtedly used in the contract business. Thus the claimant was employed in industry only when he became a Lorry driver on 13th November 1961 as stated by him in claim statement. Thus his claim has to be considered only from 13th November 1961. Comming back to the several claims in the claim

statement, the claimant has asked Rs. 120 as one month s pay in lieu of notice. It is admitted that in March 1969 the salary of the claimant was Rs. 120. U/s 25 FFF (1) the petitioner is entitled to one month's notice. The Respondent has not shown that any such notice was given to him before closure. Thus the petitioner is entitled to Rs. 120.

8. Then the second claim consists of back wages of Rs. 1,440 This pay relates to the period from March 1969 till the date of reference. The petitioner is not entitled to any wages during this period as the business was closed down in March 1969.

9. Then the third claim is for Rs. 846 for leave salary earned. This claim was denied in the written statement of the Respondent. The Respondent contended in his written statement that leave was given to the claimant from time to time. Still the claimant did not state anything regarding leave salary in his evidence. In the absence of his evidence on this point this item of claim is rejected by me.

10. Then item No. 4 of the claim consists of Rs. 840 as service compensation for 14 years. As I have stated earlier the claimant was employed in the industry only from 13th November 1961 as a Lorry Driver. And under Section 25 FFF read with Section 25 F of the Act, the claimant is entitled to closure compensation. The Respondent has not contenced nor has he proved that the undertaking was closed down on account of unavoidable circumstances beyond the control of the employer. Thus u/s 25 F (b) the claimant is entitled to compensation equivalent to 15 days average pay for every completed year of continuous service. Now the claimant himself has stated in the claim statement the rates of salary which he was drawing from 13th November 1961. He drew Rs. 70 p.m. from 13th November 1961 to 1st July 1962 and then it was raised to Rs. 80 and so on as stated in the claim statement. The business was closed down in March 1969 Thus the claimant will be entitled to compensation from 13th November 1961 to 16th March 1969. The amount of compensation will be 15 days average pay for each completed year of service. His total service comes to 7 years and 4 months. Accepting the rates of salary mentioned by the claimant, in his claim statement, the compensation for the first year would be Rs. 35 for the second year it would be Rs. 40, for the third year Rs 45, for the next two years together Rs. 100, for the next year Rs. 55 and for the still next year Rs. 60. Thus for 7 years the total compensation

will be Rs. 335. Then for the remaining 4 months the compensation will be Rs. 20. Thus in all, the claimant is entitled to Rs. 355 Adding to this Rs. 120 in lieu of notice, the total claim admissible comes to Rs. 475. However the Respondent H. R. Deshmukh alone will not be entitled to pay the entire compnesation. It is admitted by the claimant himself that the business is closed and the three brothers are separated in estate after they went to Bombay. Under these circumstances it was the bounden duty of the claimant to implead all the three brothers in this proceeding. Admittedly the firm is no more in existence, and it was dissolved in March 1969. So the claimant ought to have made a claim against all the partners and he has chosen to implead only one of the partners Sri H. R. Deshmukh who has taken only 1/3rd of the estates of the entire firm. So he is liable to pay only 1/3rd of the compensation.

11. The next item of claim in the claim statement relates to overtime work allowance. This was denied in the written statement. Still the claimant has not chosen to say anything regarding this claim in his evidence. In the absence of any evidence of the claimant in this behalf, I reject this item of claim also.

12. Then the next claim is of Rs. 1,000 relating to weekly holidays. This claim also was denied in the written statement by saying that the claimant was given weekly holidays. Nonetheless the claimant does not say anything regarding this claim in his evidence and how he is entitled to it. So this item of claim also has to be rejected.

13. Then the last claim is regarding Bonus. In the written statement this claim was denied on the ground that the Bonus was not given to any employee. Now the payment of Bonus Act, 1965 will not apply to any industry unless at least 20 workers are employed in the industry. There is nothing to show that in the industry of Respondent 20 workers were employed. The claimant does not at all refer to this claim in his evidence. He does not say that there were 20 workers in Respondents industry, and bonus was given to them. Under the circumstances I reject this item of the claim also.

14 The result is that the claimant has established that he is entitled to compensation of Rs. 475 only. Out of this, the share of Sri H. R. Deshmukh will be Rs. 158-33. Hence my award.

AWARD

15. Sri H. R. Deshmukh, who was one partner of the firm Sri R. D. Deshmukh & Sons, should pay to the petitioner Rs. 158-33, as closure compensation and compensation in lieu of notice together. Since the firm is no more in existence and the business of the firm is closed down, the claimant is not entitled to re-instatement. There will be no order as to costs of this proceeding.

W. K. KULKARNI,
Presiding Officer,
Labour Court, Hubli.

ORDER

Bangalore, dated 22nd December 1970.

S. O. 147.—WHEREAS by State Government Order No. FCL 814 LLD 69, dated 21st Febraury 1970, the Industrial Dispute between the Workmen and the Management of Sri R. D. Deshmukh & Sons, Transport Operators and Contractors, Ste[illegible] Area, Gulbarga was referred to the Labour Court, Hubli for adjudication;

AND WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 274 LLA 70.

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary.